

1983 WL 181960 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 29, 1983

*1 A. G. Solomons, Jr., Esquire
Attorney at Law
Post Office Box 969
Estill, South Carolina 29918

Dear Mr. Solomons:

As County Attorney, you have requested that this office advise you as to the proper method of establishing school tax millage in Hampton County. This question was previously addressed, in part, in an opinion of this office which indicated that the Hampton County Council had the authority to establish a county-wide school tax millage under [Section 4-9-70 of the Code of Laws of South Carolina \(1976\)](#). [Op. Atty. Gen.](#) (January 14, 1982, by Karen L. Henderson, former Deputy Attorney General). [Section 4-9-70](#) also provides, in part, that county councils shall determine by ordinance the method of establishing the school tax millage except under the circumstances described in the law. You have asked to be advised as to whether this general provision gives the Hampton County Council any powers in addition to the authority to set the county-wide millage noted above.

The county-wide millage provision does not appear to limit County Council's general power to determine the method of establishing millage. [Section 4-9-70](#) states that 'council shall determine the method [emphasis added]'. This use of the word 'shall', which normally carries a mandatory construction, indicates that Council is required to determine by ordinance the method of establishing the millage except as otherwise provided in [Section 4-9-70](#). [SUTHERLAND STATUTORY CONSTRUCTION](#), Vol. 2A § 57.03 (4th Ed). In contrast, Council's authority to set county-wide millage applies only in multi-district counties and its use of the word 'may' indicates that it is merely a discretionary power. [Id.](#) Thus, because the county-wide provision is merely discretionary, it does not limit Council's mandatory duty to determine the method of establishing millage.

No other provision of [Section 4-9-70](#) appears to provide an exception to the Hampton County Council's authority. The express exceptions apply when, on the statutory dates, millage was established by school district boards of trustees, county boards of education, or meetings or referenda of the electors or when the General Assembly retained such authority. The only one of these exceptions of possible applicability to the local provisions for Hampton County is that which requires that the legislative delegation review the budget for Hampton County before taxes are levied. Sections 21-2971 [et seq.](#) of the Code of Laws of South Carolina (1962), as amended, by Act 120, Acts and Joint Resolutions of South Carolina (1963).¹ The previous opinion of this office cited above expressed doubt that this power translated into authority to 'establish or limit the millage' or to 'levy a tax for educational purposes' so as to invoke the [Section 4-9-70](#) exception. [See, Ops. Atty. Gen., supra.](#)

Because none of the exceptions in [Section 4-9-70](#) appear to be applicable to Hampton County and because the county-wide millage provision does not limit other powers of Council, the Hampton County Council appears to have authority to determine by ordinance the method of establishing school tax millage in Hampton County.

*2 If we may be of further assistance, please contact us.
Very truly yours,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 In Hampton County, the millage is set by the county auditor after the school budgets have been approved by a school budget commission composed of the county superintendent, treasurer and auditor and approved by the legislative delegation. §§ 21-2971, et seq. and Act 120, 1963.

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